IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 11306 of 2004(U)

PETITIONER:

SANTHOSH KUMAR, AGED 24 YEARS,
S/O.GOPAKUMAR, KOOTHANALIL, THE NEW VISION
CABLE NET WORK, THAIKKATTUKARA ALUVA.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD, REP.
BY ITS SECRETARY, VYDYUTHI BHAVAN, TRIVANDRUM.

2. EXECUTIVE ENGINEER, ELECTRICAL DIVISION,
K.S.E.B. ALUVA.

3. THE ASSISTANT ENGINEER, ELECTRICAL
SECTION, K.S.E.B. ALUVA TOWN.

4. THE DEPUTY CHIEF ENGINEER,
K.S.E.B. VYTTILA.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE CERTIFICATE OF REGISTRATION ISSUED FROM THE HEAD POST OFFICE UNDER THE CABLE TV NETWORK ACT TO THE PETITIONER DT.14.8.2003.

EXT.P2: COPY OF THE APPLICATION DATED 01.03.2004 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P3: COPY OF THE SKETCH SHOWING THE ROUTE THROUGH WHICH THE PETITIONER PROPOSES TO DRAW THE CABLES THROUGH ELECTRIC POLES.

EXT.P4: COPY OF THE APPLICATION DATED NIL SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT ON 15.03.2004.

EXT.P5: COPY OF THE ORDER DATED 29.03.2004 ISSUED BY THE 3RD RESPONDENT.

TRUE COPY

P.A.TO JUDGE

A.K.BASHEER,J

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W. P(C).No.11306 OF 2004

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Dated this the 3rd day of April, 2007

JUDGMENT

Petitioner is a cable network operator having his area of activity in and around Aluva Municipality. It is admitted by the petitioner that he had drawn network cable through the poles erected by the Kerala State Electricity Board under Aluva Electric Division, since 2004. It appears that the petitioner had not obtained any permission from the Board in writing, for drawal of the cables. Therefore, the Board had threatened to take action against the petitioner and informed him through Ext.P5 that unless he removed the cables from the poles within 24 hours, appropriate action would be taken against him without any further notice. It was at that stage that the petitioner had preferred this writ petition for appropriate reliefs and specifically for issuance of a writ of mandamus or such other writ or direction to the respondent to permit him to draw " optical fibre cable through 500 electrical poles "as requested by him in Ext.P2.

2. Learned standing counsel for the board has made available the relevant file which shows that M/s. Global Mission Cable TV Network had already been permitted by the Board to draw their cables through 1250 poles in the division concerned. The said cable TV operator had executed an agreement for five years with effect

from January 10, 2000. The said agreement was renewed for a further period of three years which is due to expire in January 2008. Learned standing counsel further submits that M/s. Global Vision Cable TV Network have remitted the pole rent for the relevant period.

3. Faced with the above situation, learned counsel for the petitioner submits that the petitioner will be satisfied if he is permitted to draw his cable through the poles which are not used by M/s. Global Vision Cable TV Network in the area. It is further submitted by Smt. M.A. Vaheeda Babu that the pole rentals for the requisite number of poles will be paid by the petitioner, if such permission is granted. She further submits that the entire dues, towards rental in respect of the poles through which cable had already been drawn by the petitioner will be paid without any delay. In the above facts and circumstances the writ petition is disposed of with the following directions:

a) Respondent No.2 shall consider and pass appropriate orders on Ext.P2 as expeditiously as possible,at any rate, within one month from the date of receipt of a copy of this judgment. While doing so, respondent No.2 shall consider whether the request made by the petitioner to allow him to draw the cable through the poles which are not used by M/s. Global Vision Cable TV Network, if there are any, can be allowed. It will be open to the petitioner to point out

those poles which are not used by M/s. Global Vision Cable TV Network and to respondent No.2 who in turn will ascertain the availability and pass appropriate orders giving permission to the petitioner to draw his line.

b) Petitioner shall remove his cables from the poles which are covered under the agreement between the Board and M/s. Global Vision.

c) Respondent No.2 shall issue a demand notice to the petitioner as regards the due if any payable by him towards the pole rental for the period from 2004 till date, on the basis of the actual number of poles that have been used by him so far. Respondent No.2 shall issue the demand notice after hearing the petitioner.

d) Petitioner shall remit the balance, if any payable, after deducting the sum of Rs.85,000/- which is admittedly paid by the petitioner till date towards the rental, within two weeks from the date of receipt of the demand notice.

e) The respondent shall not dismantle the existing cables drawn by the petitioner till the expiry of the period of two weeks from the date of issue of the demand notice.

A.K.BASHEER,JUDGE

dvs